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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

PUBLIC COPY

File: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 20 2003**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Delaware limited liability company (LLC) that seeks to employ the beneficiary as its senior vice president of marketing and publishing. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition on the grounds that: (1) a qualifying relationship does not exist between the two entities; and (2) the foreign entity did not employ the beneficiary in an executive or managerial capacity for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant.

On appeal, counsel submits a brief. Counsel states, in part, that the petitioner's human resources manager failed to understand the director's request for evidence and, therefore, failed to submit required evidence. Counsel submits additional evidence, which he states is sufficient to overcome the director's reasons for denying the petition.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), states, in pertinent part:

- (1) Priority Workers. - - Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. - - An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). No labor certification is

required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is the parent of CRC Press (U.K.), LLC (CRC Press U.K.), which was organized in the State of Delaware and registered in the United Kingdom as an overseas company; (2) is in the field of book publishing; and (3) employs 220 persons, including the beneficiary, who is currently occupying the proffered position as a nonimmigrant intracompany transferee (L-1A). The petitioner is offering to employ the beneficiary permanently at a salary of \$150,000 per year.

The first issue to be discussed in this proceeding is whether a qualifying relationship exists between the petitioner and CRC Press U.K. The petitioner claims that it wholly owns CRC Press U.K.

Pursuant to 8 C.F.R. § 204.5(j)(2):

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity. . . .

At the time of filing the petition with the Texas Service Center on May 9, 2001, the petitioner submitted a 1999 annual report of Information Holding, Incorporated (IHI). According to this report, IHI owned the petitioner; however, there was no information on the ownership of CRC Press U.K. Therefore, on February 28, 2002, the director requested documentary evidence that would establish the ownership and control of the two entities. In particular, the director requested copies of stock certificates, corporate bylaws, or published annual reports that showed the percentage that the parent company owned in each affiliate or subsidiary. In response, the petitioner submitted a 2000 annual report of IHI.

The director denied the petition, in part, on the lack of evidence concerning a qualifying relationship between the two entities. The director noted that the annual report showed only the ownership of the petitioner, not the CRC Press U.K.

On appeal, counsel states that the petitioner erroneously believed that the qualifying relationship between the petitioner and CRC Press U.K. had already been established to the satisfaction of the Bureau because the Bureau had previously approved an L-1A petition on the beneficiary's behalf. Counsel states that CRC Press U.K. is a limited liability company that was formed in the State of Delaware in August 1998 and is qualified to do business in the

United Kingdom. Counsel also claims that the petitioner is the sole member owner of CRC Press U.K. In support of his assertions, counsel submits a chart that shows the ownership structure of IHI and an affidavit from the petitioner's president and chief financial officer (CFO).

The chart that describes IHI's ownership structure indicates that IHI wholly owns Information Ventures LLC. Information Ventures LLC, in turn, wholly owns the petitioner. The petitioner, in turn, wholly owns CRC Press U.K. The president declares that on August 5, 1998 in the State of Delaware, the petitioner formed CRC Press U.K. as a wholly-owned subsidiary. The president further avows that CRC Press U.K. was registered as an overseas company in accordance with the laws of the United Kingdom, and that since its formation, CRC Press U.K. has continued to be a wholly-owned subsidiary of the petitioner. To support his declarations, the president submits copies of CRC Press U.K.'s Certificate of Formation, and its Certificate of Registration as an Overseas Company.

Ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between two for purposes of this immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (Comm. 1988). Generally, a petitioner's assertions, by themselves, will not suffice to establish the essential elements of ownership and control. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner must disclose all documents relating to the ownership and control of the two entities, which include, but are not limited to, copies of stock or interest certificates, a corporate stock ledger, stock certificate registry, corporate bylaws, minutes of relevant annual shareholder meetings, articles of organization, and operational agreements.

The petitioner has not presented sufficient documentary evidence to establish that it is the parent of CRC Press U.K. CRC Press U.K.'s Certificate of Formation indicates at item 15 that: "The interest of the Member in the Company shall be represented by a certificate setting forth . . . the percentage of the interests in the Company owned by the Member. . . ." The petitioner does not submit any interest certificates to corroborate the president's declaration that CRC Press U.K. is wholly owned by the petitioner. Nor has the petitioner submitted any other documentary evidence to confirm information in the president's affidavit. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. Based upon information before the Bureau at the present time, the petitioner has not overcome this basis of the director's decision to deny the petition.

The second and final issue in this proceeding is whether the CRC Press U.K. employed the beneficiary in an executive or managerial

capacity for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant.

At the time of filing the petition, the petitioner did not furnish the record with a description of the beneficiary's position with CRC Press U.K. Therefore, on February 28, 2002, the director requested "a definitive statement **from the foreign company** describing the job duties of the beneficiary" (Emphasis in original.) In response, the petitioner stated: "As this is an Immigrant Petition for Alien Worker (not a petition for a nonimmigrant worker), please advise if the request of [sic] [a] definitive statement from the foreign company information is, indeed, required."

On appeal, counsel again states that the petitioner erroneously believed that the beneficiary's managerial or executive role with CRC Press U.K. had already been established to the satisfaction of the Bureau because the Bureau had previously approved an L-1A petition on the beneficiary's behalf. Counsel submits a description of the beneficiary's position with the CRC Press U.K.

Bureau regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record does not contain a description of the beneficiary's position with the foreign entity. Therefore, there is no evidence that the beneficiary's employment with CRC Press U.K. was in a managerial or executive capacity. Accordingly, the director's denial of the petition on this basis also will not be disturbed.

The Bureau does note, however, that if the Administrative Appeals Office had considered the evidence submitted on appeal, it would have been sufficient to establish that the beneficiary's employment with CRC Press U.K. was in a managerial or executive capacity. However, the Administrative Appeals Office would not have withdrawn the director's decision on this issue because the beneficiary's employment with CRC Press U.K. would not have been with a qualifying entity. 8 C.F.R. § 204.5(j)(3)(i)(B).

Finally, as the petitioner failed to respond specifically to the director's request for evidence because it believed that the requested evidence was already included in the record, it is worth emphasizing that that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the Bureau is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). If a director requests additional evidence that the petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence. The record of the nonimmigrant proceeding is not combined with the record of the immigrant proceeding.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.